

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT:

(To accompany bill S. 49.)

*The Committee on Private Land Claims, to whom was referred the petition of the heirs and legal representatives of Thomas Maddin, deceased, praying confirmation of a certain land claim, beg leave to report:*

That, on the 17th December, 1799, Thomas Maddin petitioned Charles D. Delassus, lieutenant governor of Upper Louisiana, for a grant of eight hundred arpents of land on the river Joachim, in the district of St. Genevieve; that, on the 30th of December, 1799, the lieutenant governor ordered the surveyor general to put the petitioner in possession of the land and make report of his survey thereof, "so that it may serve to solicit the concession from the intendant general of these provinces, *to whom alone belongs, by royal order, the distribution and concession of all classes of royal lands.*"

Nothing further appears to have been done by the petitioner prior to the treaty of cession by which Louisiana was transferred to the United States on the 30th of April, 1803.

On the 7th September, 1803, Antonio Souland, the special surveyor for Upper Louisiana, to whom the lieutenant governor's order of 30th December, 1799, had been issued, signed a certificate stating that on *the 20th July, of the preceding year*, he had surveyed the land by virtue of the above order. Under the act of Congress of 2d March, 1805, the petitioner presented this claim for confirmation to the commissioners, and it was twice rejected, viz: on the 23d June, 1806, and on the 23d August, 1810.—(See American State Papers, Public Lands, vol. 2, p. 463.)

On the 13th June, 1812, Congress passed a law "making further provision for settling the claims to land in the Territory of Missouri," (1st Land Laws, p. 216,) by the third section of which it is provided "that every claim to a donation of lands in said Territory, in virtue of settlement and cultivation, which is embraced by the report of the commissioners transmitted to the Secretary of the Treasury, and which, by the said report, shall appear not to have been confirmed, (1st,) merely because permission by the proper Spanish officer to settle has not been duly proven, or (2d) because the tract claimed, although inhabited, was not cultivated on the 20th December, 1803, or (3d) not to have been

confirmed on account of both said causes; the same shall be confirmed, in case it shall appear that the tract so claimed was *inhabited* by the claimant or some one for his use prior to the 20th December, 1803, as aforesaid, and *cultivated in eight months thereafter*."

By the 4th and 8th sections of the law, the recorder of land titles was directed to make report of his action to the Commissioner of the General Land Office, by whom the report was to be laid before Congress. The reports were accordingly made on the 1st November, 1815, and 2d February, 1816.—(See 3d vol. Pub. Lands, pp. 274 to 330.)

The reports thus made were confirmed by act of April 29, 1816.—(1 Land Laws, p. 280.)

By reference to the above reports of the commissioners, it will be seen that the petitioner's claims was first rejected on the 23d June, 1806, as "unsupported by actual inhabitation and cultivation," and that "the board require further proof of the date of said concession;" and on the 20th August, 1810, the board reported in unqualified terms that "the claim ought not to be granted." And on this report the claim was not one which the recorder of land titles was authorized to report for confirmation under the act of 13th June, 1812, because that act authorized the confirmation *only where there had been habitation prior to the 20th December, 1803, followed by cultivation* within eight months thereafter; nor could he recommend the confirmation under the second section of the act of April 12, 1814, (1 Land Laws, 243,) because that section only authorized confirmation where claims had been previously rejected, *merely* for want of habitation on the 20th December, 1803, whereas the present claim was rejected, not only on that ground, but also "because the board required further proof of the date of the concession."

Accordingly the recorder of land titles did not include this claim in the report of those which he recommended for confirmation, but he did recommend the confirmation of three other tracts as follows, viz:

1. Thomas Maddin, 1,000 arpents, situated in New Bourbon, county of St. Genevieve, under possession, habitation and cultivation, from 1797 to 1804.

2. Thomas Maddin, 6,000 arpents, situated on Big river, and river Aux Vases, county of St. Genevieve, under habitation, cultivation, and erection of a mill.

3. Thomas Maddin, jr., 800 arpents, on north branch of Saline, county of St. Genevieve, under habitation and cultivation in 1812 and 1813, and special location under Z. Trudeau, lieutenant governor.

These confirmations are found at pp. 300, 301, and 302 of the 3d vol. Pub. Lands.

The petitioners, not now pretending that there was any actual confirmation of their claim under the laws and proceedings above set forth, aver that it was *unintentionally omitted* in the reports, and ought to have been confirmed, and would undoubtedly have been confirmed but for the error or oversight of the recorder in omitting it; and in support of this averment they file a paper of which the following is a copy, viz:

"CLAIM No. 1831.

"OFFICE OF THE RECORDER OF LAND TITLES,  
*St. Louis, January 6, 1818.*

"There ought to be found on the lists supplied by this office for survey, a claim of 800 arpents, in the name of Thomas Maddin, situated on the Joachim, and of which the following is a copy from the record of the survey entered with my predecessor.

[Here is a plat.]

"Given under my hand the date above. Resurvey, United States expense.

"FREDERICK BATES.

"General WILLIAM RECTOR,  
*General Surveyor for Illinois and Missouri."*

To this paper is appended a certificate that it is correctly copied from the book of "Confirmations by the Old Board and Recorder Bates," on file in the office of the surveyor general, in St. Louis.

This paper, with the proceedings had under it, form the only proof of the alleged *unintentional omission*, and your committee consider the evidence insufficient to establish the averment, for in view of the fact that Mr. Bates had actually recommended for confirmation a tract of 800 arpents, in favor of the claimant on the *Saline* river, it seems much more probable that he confounded the tract thus confirmed with that situated on the Joachim river, when he signed the paper of 6th January, 1818, than that he should have entirely omitted the Joachim river tract in his official reports, if his intention had been to confirm it; and this presumption is still further fortified by the consideration that, under the laws which formed his guide for acting on these claims, he could not properly have recommended the Joachim tract for confirmation.

Your committee therefore report that there is not, in their judgment, any legal or equitable ground shown for a gratuitous confirmation of this claim.

There remains, however, another question on which the committee have no hesitation in making a report favorable to the claimants. There is a strong equity in their favor for a preëmption right. The land has been occupied, cultivated, and improved by them, and those from whom they deraign title, for a number of years. It has been converted by their labor from wild land into cultivated farms and covered with valuable improvements, and there is no reason to doubt the good faith of those who have held it for the last thirty years. There is no justice in refusing them the right to purchase the land at the regular price charged by the government for entries of other lands that are open for sale in its land offices. Such a refusal would amount to a virtual confiscation of their improvements, and the fruits of the labor of themselves and their ancestors.

Your committee therefore report a substitute for the bill referred to them, and recommend its passage.

